FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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MAY 19 2016

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)	:	
	:	Docket No. WEVA 2014-685
v.	:	Mine ID: 46-09192
ACI TYGART VALLEY	:	

BEFORE: Jordan, Chairman; Young, Cohen, Nakamura and Althen, Commissioners

ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2006) ("Mine Act"). On March 18, 2014, the Commission received from ACI Tygart Valley ("ACI") a motion seeking to reopen an imminent danger order that had become a final order pursuant to section 107(e) of the Mine Act, 30 U.S.C. § 817(e).

Under section 107(e) of the Mine Act, an operator who wishes to contest the issuance of an imminent danger order under section 107(a) must notify the Secretary of Labor no later than 30 days after being notified of such order.

In evaluating requests to reopen final imminent danger orders, the Commission finds guidance in Rule 60(b) of the Federal Rules of Civil Procedure under which, for example, a party could be entitled to relief from a final order of the Commission on the basis of mistake, inadvertence, or excusable neglect. *See* 29 C.F.R. § 2700.1(b) ("the Commission and its Judges shall be guided so far as practicable by the Federal Rules of Civil Procedure"); *JWR*, 15 FMSHRC at 787. We have also observed that default is a harsh remedy and that, if the defaulting party can make a showing of good cause for a failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

Records of the Department of Labor's Mine Safety and Health Administration ("MSHA") indicate that the imminent danger order was delivered on January 13, 2014, and became a final order on February 12, 2014. ACI asserted that on February 24, 2014, it received the results of the bottle samples which were taken by MSHA to substantiate the 107(a) imminent danger order,

and that based upon the results, it concluded that no imminent danger existed. Since the period for contesting the violation had already expired by the time ACI received the results of the bottle samples, ACI requested that the Commission reopen these proceedings. The Secretary opposed the request to reopen. The Secretary noted that the reasonableness of the imminent danger order did not depend on the results of the bottle samples, but on the information available to the inspector when the order was issued. Therefore, the Secretary contended that the operator did not have to wait until it received the results to contest the order.

We note that the motion to reopen was filed only 34 days after the order became final, and that the 104(a) citation issued in conjunction with the imminent danger order, Citation No. 8050878, was timely contested by the operator. Furthermore, we note that as the record has yet to be developed in this matter, it would be prudent to reopen and remand this proceeding to an Administrative Law Judge, so he or she may consider the Secretary's argument in light of the record.

Having reviewed ACI's request and the Secretary's response, in the interest of justice, we hereby reopen this matter and remand it to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.

Mary Lu Jordan, Chairman

Michael G. Young, Commissioner

Robert F. Cohen Jr., Commissioner

Patrick K. Nakamura, Commissioner

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